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BANKS AND BANKING—RIGHTS OF DEPOSITING CUSTOMERS.—"When a bank gives one of its depositors credit by a check drawn in favor of that depositor by another depositor on the same institution, in the absence of fraud or collusion, the act of crediting to the depositing customer will be given the same effect as if actual cash had been paid to him; and if thereafter, even though it be on the same day, the bank officials ascertain they have made a mistake, and the drawer did not in fact have the money on deposit to meet the check, it will not affect the rights of the depositing customer, for it is a completed transaction, as much so as if the actual money in cash had been paid to the customer over the counter."

The necessities of commerce require that there shall be the utmost good faith between the banking institution and its customers, and when one customer of a bank presents to it a check drawn on it by another customer, and is given credit by that amount on the books of the institution, or is given what amounts to a certificate of deposit for that amount, the transaction is closed and the depositing customer has a right to rely upon the fact that he has that amount of money on deposit in that institution; and if there is any question of loss between the customer and the bank, the latter must bear that loss because it brought about the loss by its own mistake or oversight.

This decision is in keeping with the holding of other cases: *Wasson* v. *Lamb,* 120 Ind. 514, "The settled rule is, where checks, drafts or other evidences of debt are received in good faith as deposits, if the bank credits them as so much money, the title to the checks or drafts is immediately transferred to the bank, and it becomes legally liable to the depositor as for so much money deposited." *Robinson & Co., et al.* v. *Bank of Pikeville, et al.,* 146 Ky. 538, "When a bank receives, not for collection, but as so much money, a check and places the amount to the credit of a customer, it thereby assumes liability for this amount to all persons to whom the customer may give checks." *First National Bank* v. *Mammoth Blue Gem Coal Co.,* April 28, 1922, 194 Ky. 580. S. B. N.

ROAD BONDS—ROADS MAY BE ALTERED BY FISCAL COURT—MONEY DONATED TO STATE HIGHWAY COMMISSION.—At an elec-

tion on road bonds, it was voted that certain inter-county seat roads be built and a commission appointed before the election by the fiscal court, ordered the road built along a certain route. The money obtained from the sale of the bonds was paid to the State Highway Commission specifying the purpose of the bonds. Held, an order designating the particular road along which a highway is to be built, can be waived by the fiscal court unless specific roads are identified beyond question. The promise to use funds for certain roads is complied with by donating the funds to the State Highway Commission, having designated the roads to be improved.

When prior to an election, the proper authorities entered of record the specified and named roads, upon which the proceeds of the bonds would be expended and the people voted the indebtedness with this understanding, neither the fiscal court nor any other authority having jurisdiction over the subject matter could divest the funds. *Scott* v. *Forest, County Judge,* 174 Ky. 672, 192 S. W. 691; *Campbell* v. *Clinton County,* 176 Ky. 396, 195 S. W. 787. That such bonds are valid. *Lawrence County* v. *Lawrence Fiscal Court,* 191 Ky. 45, 229 S. W. 139.

Such roads, however, must be specifically designated; otherwise, where an order is thus made, the fiscal court or other authorities may exercise their discretion and the doctrine that orders made beforehand must be strictly complied with creates a restraint upon the powers and duties of the fiscal court and other public road authorities. The case must be construed then to mean that an inter-county seat road will be built and a part of the proceeds of the bond issue will be donated for that purpose. *Wilson* v. *Fiscal Court of Caldwell County,* 240 S. W. (Ky.) 743. J. B. C.

LIQUORS—EVIDENCE OF HAVING SAME FOR SALE.—The defendant called at an express office for packages containing liquor and paid the charges and then went with the express agent to the warehouse to get the packages, but before the express agent had identified them or pointed them out, or indicated that they were at the defendant's disposal, the police officers arrested the defendant and themselves took possession of the packages.

This action was brought against the defendant for violating section 2554a-1 of the Kentucky Statutes, which made it

unlawful to keep liquors for sale except for sacramental purposes, etc.

The court held that the defendant never had the possession, but that the possession passed from the express agent to the officers. It was construed that the words "to keep" mean to have in possession. The defendant could not be convicted for keeping liquors for sale because he did not have possession himself or through an agent. *Young* v. *Commonwealth,* April 25, 1922, 194 Ky. 561. J. B. N.

ARSON—TRAILING OF BLOODHOUNDS—SUFFICIENCY OF EVIDENCE.—Three persons were jointly indicted by the grand jury of Bracken County, in which they were charged with the offense of feloniously setting fire to and burning the barn of their neighbor. Bloodhounds were obtained immediately after the fire. The dogs trailed from the place of the burned barn to the place where the accused were and took particular notice of these three persons but would not notice any other members of the family.

One of the chief questions for determination was the proper effect to be given the trailing of bloodhounds, when the evidence is admissible at all in criminal prosecutions. It was found, after the examination of numerous authorities, such as follow: *Pedigo* v. *Commonwealth,* 103 Ky. 41, 44 S. W. 143, 42 L. R. A. 432; *Blair* v. *Commonwealth,* 181 Ky. 218, 204 S. W. 67; *State* v. *Adams,* 35 L. R. A. (N. S.) 870; *Ruse* v. *State,* L. R. A. 1917E 726, that with the exception of Indiana and Illinois the trailing of bloodhounds, under certain conditions, is competent evidence, but all the courts agree that before it may be introduced for any purpose, it must be shown that the dogs "have been trained to follow human beings by their tracks and to have been tested as to its (or their) accuracy in trailing upon one or more occasions."

The next question was the effect to be given to the testimony after it is received. It was held, after examining the authorities cited above, "that proof of trailing by bloodhounds standing alone is not sufficient to authorize a conviction; for, after all, the trailing of the dogs is in the nature of expert testimony, which when given by trained educated persons, is regarded with more or less disfavor and classed as among the weakest character of testimony."

From the authorities cited in this case, it seems that the trailing of bloodhounds, when admitted as evidence, may be used to corroborate other evidence, which, when taken together, may connect the accused with the crime and lead to a legal conviction. Therefore, the general rule seems to be that when evidence of trailing bloodhounds is admitted, it must be supported by substantial evidence, before a conviction is justifiable. *Myers* v. *Commonwealth*, April 21, 1922, 194 Ky. 523, 240 S. W. 71.
O. W. C.

HOLOGRAPHIC WILLS—EXTRINSIC EVIDENCE TO SHOW INTENTION.—A testator, by holographic will, devised all his property to his nephew. The brothers and sisters of the testator contested the will on the ground of forgery. After proving the handwriting of the testator, the contestee was permitted to show that the testator stated before making his will that he intended leaving his property to the contestee, and that he stated after the date of the will that he had made a will making the contestee his sole devisee. Held, in the contest of a will on the sole ground of forgery, both the ante-testamentary declarations of the testator that he intended to make a will leaving his property to the contestee, and his post-testamentary statements that he had made such a will are admissible in corroboration of other and more direct evidence tending to show the genuineness of the will. *Atherton, et al.* v. *Gaslin, et al.*, 194 Ky. 460. C. H. L.

ADVERSE POSSESSION—ENTRY OF JOINT TENANTS.—David Hogan owned certain land in Lee County, and in payment of a debt he conveyed the land to H. C. Needham & Co., Hogg & Bro., and E. M. Pryse & Bro., making them joint tenants. Later a suit for partition was brought and a sale of the land ordered. At the sale J. M. Sebastain bid the property in; Hogg & Bro. and Pryse & Bro. paid him their part.

In 1885, H. C. Needham conveyed his interest to D. B. Fields, who was the husband of the appellant (defendant in the court below) under whom she now claims. The whole of the land has been in the continuous and undisturbed possession of D. B. Fields and after his death in that of the appellant, in all for a period of over twenty years.

Appellees (plaintiffs in the court below) claim the interest of Hogg & Bro. and Pryse & Bro., and contend that they are

joint tenants with appellant, and therefore appellant acquired no title by adverse possession. They sought and obtained a decree for the sale of the land, and a division of the proceeds among the respective interests as alleged. This appeal is prosecuted to reverse that judgment.

The Court of Appeals reversed the judgment appealed from, and the judge delivering the opinion of the court said: "We cannot concur in the view that the occupancy of Fields and the appellees was that of joint tenants, in which event it is contended that appellants could not acquire title by adverse possession. Ordinarily the entry of one joint tenant upon land inures to the benefit of the others and his possession is not adverse to the rights of the others, but it has been repeatedly held by this court that the possession may be so hostile and adverse to the others as to invest the claimant with title by prescription."

In this case the court follows very closely the doctrine as laid down in some earlier cases: *Gossom* v. *Donadlson,* 18 B. Monroe 238; *Culver* v. *Culver's Admr.,* 25 Ky. L. R. 296; that one co-tenant might obtain title by prescription provided the holding was very hostile and adverse. But there is another feature yet. When Sebastain sold his interest to Fields the joint tenancy ended and any possession of the whole of the property would be adverse to the other joint tenants. *Larman* v. *Huey's Heirs,* 52 Ky. 436; *Pope* v. *Brassfield,* 110 Ky. 128.

The particular point of this case, i. e., adverse possession by joint tenant, seems to be rather unique. The decisions of the Kentucky Court of Appeals are about the only ones to be found on this point. *Smith, et al.* v. *Hogg, et al.,* April 21, 1922, 195 Ky. 265. E. S.

OWNERSHIP OF PERSONAL PROPERTY—PROVINCE OF COURT AND JURY.—The trustee in bankruptcy of the husband brought an action against the husband and wife for the possession of an automobile. The wife claimed the ownership of the automobile by purchase from the husband soon after he had bought it and previous to the bankruptcy proceedings. The evidence was conflicting, and the court submitted to the jury the question of ownership.

The Court of Appeals reversed the judgment for the plaintiff on the ground that the lower court erred in submitting the

question of ownership to the jury. Ownership being a mixed question of law and fact, the trial court should have stated to the jury what constituted ownership and permitted the jury merely to pass on the existence of such facts.

While there are no Kentucky cases bearing directly on this point, it has been very generally held to be erroneous for the court to submit a mixed question of law and fact to the jury, unless under proper instructions from the court. *Porter* v. *Blood,* 22 Mass. (5 Pick) 54, in all cases involving a mixed question of law and fact, the facts are to be submitted to the jury, with proper instructions as to the law. *Electric Vehicle Co.* v. *Price,* 138 Ill. App. 594, an instruction should not submit to the jury the determination of questions of mixed law and fact. *Osborn et ux.* v. *Thomasson,* April 18, 1922, 194 Ky. 499, 239 S. W. 774. J. G. B.

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